18 Edw. I, c. 1, the right of alienation has been considered an inseparable incident of a fee simple estate and conditions prohibiting the alienation of such an estate have been held void. LITT. § 360; COKE LITT. § 223a; 4 KENT, COM. *131; *McCleary* v. *Ellis,* 54 Iowa 311; *Blackstone Bank* v. *Davis,* 21 Pick. 42; *Todd* v. *Sawyer,* 147 Mass. 570; *Jauretsche* v. *Proctor,* 48 Pa. St. 466; *Freeman* v. *Phillips,* 113 Ga. 589; *Murray* v. *Green,* 64 Cal. 363; *Potter* v. *Coach,* 141 U. S. 296, 315. While there is this unanimity in the case of an absolute prohibition, there is a division of the authorities concerning limited restraints. One line of cases considers any restraint, however limited, upon the alienation of a fee simple estate to be inconsistent with the nature of such an estate and void. *Roosevelt* v. *Thurman,* 1 Johns. Ch. 220; *Greene* v. *Greene,* 125 N. Y. 506; *Hall* v. *Tufts,* 18 Pick 455; *Winsor* v. *Mills,* 157 Mass. 362; *Jones* v. *Pt. Huron Engine Co.,* 171 Ill. 502; *Mandlebaum* v. *McDonell,* 29 Mich. 78, 18 Am. Rep. 61; *Re Schilling,* 102 Mich. 612; *Fowlkes* v. *Wagoner* (Tenn. Ch. App.) 46 S. W. 586; *Anderson* v. *Cary,* 36 Ohio St. 506; *Lattimer* v. *Waddell,* 119 N. C. 370; *Zillmer* v. *Landguth,* 94 Wis. 607; *In re Roscher,* L. R. 26, Ch. Div. 801. The other line of authorities proceeds on the theory that restraints on the alienation of a fee, which are limited and reasonable in their application and as to the time during which they will operate, are valid and will be upheld. *Stewart* v. *Brady,* 3 Bush (Ky.) 623; *Wallace* v. *Smith,* 113 Ky. 263; *Langdon* v. *Ingram,* 28 Ind. 360; *Earls* v. *McAlpine,* 27 Grant Ch. (U. C.) 161; *Chisholm* v. *London etc. Co.,* 28 Ont. Rep. 347. As is indicated in the principal case, there is no general rule by which it can be determined what restraints are reasonable and what unreasonable; but each case must be decided on its own circumstances. This rule is practically confined to Kentucky and Canada, but is favorably commented on in numerous dicta. The rule seems to have originated in an early misapprehension of *Large's Case,* 2 Leon. 82, 3 Leon. 182. See *Mandlebaum* v. *McDonnell,* supra, at p. 103. The courts which follow it, however, think it now too late to conform to what is now considered to be a more accurate construction of that ancient case, as it would involve the alteration of an established rule of property in those jurisdictions. *Fowlkes* v. *Wagoner,* supra, at p. 593. Nevertheless the weight of authority and reason is with the rule first considered and it should be adopted wherever the question is still open.

RAILROADS—COVENANT TO MAINTAIN DEPOT.—Defendant railroad's assignor had covenanted with plaintiff to maintain a depot at X, and such maintenance of the depot was discontinued by defendant after a period of eighteen months from the time of the making of the covenant; upon the petition of the plaintiff for a decree requiring defendant to specifically perform the covenant, *held* that the maintaining of the station for the above mentioned period would not amount to a full performance of the covenant so long as the rights of the public to be served by the railroad had not intervened so as to make further performance burdensome and inequitable as against those interests. *Harper et al.* v. *Virginian Ry. Co.* (W. Va. 1915), 86 S. E. 919.

The question of what constitutes a full performance of a covenant to

maintain a depot is one about which there is an apparent conflict of authority. In *Texas & Pacific Ry. Co.* v. *Marshall,* 136 U. S. 393, it was held that eight years was a sufficient length of time to satisfy the terms of the contract. No facts appeared showing that the public would be injuriously affected by a further maintenance of the depot. The prevailing rule, however, seems to be that a railroad, to perform its covenant, must maintain a depot until it is evident that further maintenance would injuriously affect the interest which the public has in the railroad. See *Taylor* v. *Florida East Coast Ry.,* 54 Fla. 635, 45 So. 574. Dictum to this effect is found in *Atlanta & West Point Ry. Co.* v. *Camp,* 130 Ga. 1, 15 L. R. A. (N. S.) 594; and in *Texas & Pacific Ry.* v. *Scott,* 77 Fed. 726, 23 C. C. A. 424, these cases holding that a railroad need not maintain a depot when the public would be thereby injuriously affected. *Wallace* v. *Gt. Western Ry. Co.,* 3 Ont. App. Rep. 44, holds that, in order to satisfy a covenant, a depot must be maintained for more than two years. *Jessup* v. *Grand Trunk Ry.,* 28 Grant Ch. 583, appears to hold that in the case of the sort of covenants in question the depot must be maintained permanently. However, this case presents no facts which would justify a contrary decision upon the ground that, by further maintenance of the station, the public would be injured.

TORTS—NON-LIABILITY OF CHARITABLE INSTITUTION.—X was adjudged insane and committed to a charitable institution maintained by the state for the care and treatment of its poor and indigent insane. He escaped from the institution and later was found dead in East River. His administratrix brings suit based on the negligence of defendant's agents in allowing intestate to escape. The trial court dismissed the claim on the ground that there was not sufficient proof of neglect on the part of the hospital or hospital authorities. On appeal, the Supreme Court *held* that, even though the physicians and surgeons attending the patient were negligent, the state was not liable because no agency exists, where it had used due care in selecting the employees. *Smith* v. *State* (1915), 154 N. Y. Supp. 1003.

In *Horden* v. *Salvation Army,* 199 N. Y. 223, the court said it was the settled rule that a charitable hospital—as distinguished from one operated for profit—is not liable for the negligence of its physicians and nurses in the treatment of patients. Accord, *Collins* v. *N. Y. Post-Graduate Medical School and Hospital,* 59 App. Div. 63; *Bruce* v. *Central M. E. Church,* 147 Mich. 230; *Union Pac. Ry. Co.* v. *Artist,* 60 Fed. 365; *Hearns* v. *Waterbury Hospital,* 66 Conn. 98; *Powers* v. *Mass. Homeo. Hospital,* 109 Fed. 294. This exemption has been placed on two grounds. First, on the ground of implied waiver, it is said that one who accepts the benefit of a charity enters into a relation which exempts one's benefactor from liability for negligence of his servants in administering the charity. Cases go further and hold, even though the patient makes some payment to help defray the cost of board, the hospital is exempt from liability. *McDonald* v. *Mass. General Hospital,* 120 Mass. 432; *Downes* v. *Harper Hospital,* 101 Mich. 555. Second, on the ground that the relation between the hospital and the physicians who serve it is not one of master and servant, but that the physician occupies the posi-